

IN RE: PETITION FOR SPECIAL HEARING
NE/S Overbrook Road, 150' W
of Edmondson Avenue
(405 Overbrook Road)
1st Election District
1st Councilmanic District
Harry E. Belsinger, et al
Petitioners

* BEFORE THE
* DEPUTY ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* Case No. 91-212-SPH

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Petitioners herein request a special hearing to approve the nonconforming use of the subject property as a two apartment dwelling in accordance with Petitioner's Exhibit 1.

The Petitioners, by Harry and Nancy Belsinger, appeared, testified and were represented by Ralph K. Rothwell, Jr., Esquire. Also appearing on behalf of the Petition were Margaret Gray, Lilly Hoxter, and Robert J. Dulesse. Appearing as Protestants in the matter were Gary Grabowski, President of the Westbrook Community Association, James A. Cohill, III, and Patricia Blasco, all residents of the area.

Testimony indicated that the subject property, known as 405 Overbrook Road, consists of 2,087 sq.ft. zoned D.R. 10.5 and is improved with a townhouse dwelling containing two apartments. As a result of a complaint filed with the Zoning Enforcement Division of this Office, Petitioners were advised to file the instant Petition to establish the nonconforming use of the subject dwelling as two apartments. Mr. Belsinger testified that the property has been in his family since its development around 1939 or 1940. Mr. Belsinger testified that he distinctly remembers when his aunt Patricia Daves, owned the property in the 1950s. He was 8 years of age when she lived there. He testified that his aunt occupied the first floor and

basement levels as depicted on Page 2 of Petitioner's Exhibit 1 and rented out the second floor. Testimony indicated that at the entrance to the dwelling, there is a foyer with a door leading to the first floor apartment, and a stairway to the second floor with a separate entrance to the second floor apartment. Mr. Belsinger testified that when Ms. Daves died in 1969, her son rented out the property as two apartments from 1969 to 1974 when the property was sold to Dorothy Hahn, another aunt of Petitioner. The property was titled such that Ms. Hahn had a life estate with full powers and the remainder interest was held by him and his mother, Mildred E. Belsinger. Mr. Belsinger testified that at that time, Ms. Hahn lived on the second floor and rented out the first floor. He indicated that the original tenant was a George Hubbard who resided there until he passed away in approximately 1982. Testimony indicated that thereafter, Mildred E. Belsinger, who owned a two-family residence near Eastpoint Shopping Center, and her sister, Ms. Hahn, then decided that rather than selling one of their respective homes and moving in together, they would spend time at both residences. Mr. Belsinger testified he would drive his mother to the subject property at various times throughout the year when she would stay for varying lengths of time. His mother occupied the first floor apartment while Ms. Hahn lived upstairs. He indicated that sometimes both would stay at his mother's house.

Mr. Belsinger testified that Ms. Hahn passed away in November, 1989, at which time Petitioners remodeled the subject property and hired numerous contractors, including, but not limited to, Robert Dulesse, a plumber. Mr. Dulesse testified that he visited the subject property between January and May 1990 during which time there were no tenants as improvements were being made. He indicated that he distinctly remembers

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the dwelling being set up as a two-apartment dwelling with a separate kitchen and bathroom on both the first and second floors. Mr. Belsinger testified that since May, 1990, the Petitioners have rented out the first floor and basement level, and second floor, as two separate apartments.

Petitioners also called Margaret Gray, who testified that she resided in the first floor apartment in the early 1970s and that the second floor was rented out to a Mrs. Sharp. Mrs. Gray further testified that she moved out because the property was being sold by Robert Daves, (son of Eugenia Daves). Petitioners also called Lilly Hoxter who is the sister of Nancy Belsinger. Ms. Hoxter testified that from approximately 1987 to 1989 she would occasionally clean the two apartments at the request of Mrs. Hahn. She testified that during that time, the dwelling was used and occupied as two separate apartments. Ms. Hoxter testified that while she did not see Ms. Hahn at any time in the downstairs apartment, there was evidence that the apartment was used and occupied.

Gary Grabowski, President of the Westbrook Community Association, testified that he has resided at 434 Overbrook Road for approximately 18 months. He testified that while he has no personal knowledge as to the occupancy of the subject dwelling, the Westbrook Community Association is opposed to the relief requested.

James Cohill, who resides at 408 Overbrook Road, testified that he has been a resident of the area since 1977. He indicated that for a period of time from 1982 to 1984, he was a block watcher and had an opportunity to speak with Ms. Hahn on two occasions. Mr. Cohill testified that he was not aware at the time if the subject property was being used as a two apartment dwelling.

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Patricia Blasco, of 435 Overbrook Road, testified she has been a resident of the area for the past 39 years. She testified that she knew Dorothy Hahn and had no knowledge one way or the other as to whether or not the subject property was used as a two apartment dwelling.

There were exhibits offered by both parties, over objection, marked Protestant's Exhibits 1A and 1B, and Petitioner's Exhibits 6A, 6B and 6C. As explained at the hearing, due to the objections and the inability to cross examine the witnesses, the exhibits would not be considered in rendering a decision in this matter.

As with all non-conforming use cases, the first task is to determine what lawful non-conforming use existed on the subject property prior to January 2, 1945, the effective date of the adoption of the Zoning Regulations and the controlling date for the beginning of zoning.

The second principle to be applied, as specified in Section 104.1, is whether or not there has been a change in the use of the subject property. A determination must be made as to whether or not the change is a different use, and therefore, breaks the continued nature of the non-conforming use. If the change in use is found to be different than the original use, the current use of the property shall not be considered non-conforming. See McKemy v. Baltimore County, Md., 39 Md. App.257, 385 A2d. 96 (1978).

When the claimed non-conforming use has changed, or expanded, then the Zoning Commissioner must determine whether or not the current use represents a permissible intensification of the original use or an actual change from the prior legal use. In order to decide whether or not the current activity is within the scope of the non-conforming use, the Zoning Commissioner should consider the following factors:

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175
PETITION FOR SPECIAL HEARING
TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY: 91-212-SPH
The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Hearing under Section 506.1 of the Baltimore County Zoning Regulations, to determine whether or not the Zoning Commissioner and/or Deputy Zoning Commissioner should approve the use of premises at 405 Overbrook Road, Baltimore County, Maryland as a non-conforming use for a two apartment dwelling.

Property is to be posted and advertised as prescribed by Zoning Regulations.

I, or we, agree to pay expenses of the above Special Hearing advertising, posting, etc., upon filing of this Petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

I/We do solemnly declare and affirm, under the penalties of perjury, that I/we are the legal owner(s) of the property which is the subject of this Petition.

| | |
|--|--|
| Contract Purchaser: | Legal Owner(s): |
| (Type or Print Name) | Harry Edward Belsinger/Nancy Belsinger |
| Signature | Signature |
| Address | Mildred Eileen Belsinger |
| City and State | (Type or Print Name) |
| Attorney for Petitioner: | 1932 Snyder Avenue |
| Ralph K. Rothwell, Jr., Esquire | Dundalk, Maryland 21222 |
| (Type or Print Name) | City and State |
| 7508 Eastern Avenue | Name, address and phone number of legal owner, contract purchaser, or representative to be contacted |
| Baltimore, Maryland 21224 | Ralph K. Rothwell, Jr. |
| City and State | Name |
| Attorney's Telephone No.: (301) 282-2700 | 7508 Eastern Ave. 21224 (301) 282-2700 |
| | Address |

ORDERED By The Zoning Commissioner of Baltimore County, this 14 day of Nov, 1990, that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation throughout Baltimore County, that property be posted, and that the public hearing be had before the Zoning Commissioner of Baltimore County in Room 108, County Office Building in Towson, Baltimore County, on the 31 day of Jan, 1991, at 2:00 o'clock P.M.
FILED 1/25/91 BY JLL
P.M. TIME & DAY
FOR HEARING TIME
Zoning Commissioner of Baltimore County

ZCO-No. 1 (over)

to what extent does the current use of the property differ from the nature and purpose of the original use?

(b) Is the current use merely a different manner of utilizing the original non-conforming use or does it constitute a use different in character, nature, and kind?

(c) Does the current use have a substantially different effect upon the neighborhood?

(d) Is the current use a "drastic enlargement or extension" of the original non-conforming use."

McKemy v. Baltimore County, Md., Supra.

The undisputed testimony indicated that until 1955 the subject property was zoned an "A Residence" which permitted a two family dwelling. Testimony indicated the property was rented continuously and without interruption through 1982 when Ms. Hahn and her sister became joint occupants. The Protestants questioned whether the occupancy by Mildred Belsinger is sufficient to establish the continued nonconforming use of the dwelling as two apartments. The Maryland courts have never required a tenant to be present on the property 365 days a year to be considered a nonconforming use. In my opinion, to do so would be taking Section 104 of the B.C.Z.R. to an illogical conclusion, contrary to the spirit and intent of the regulations. Based upon the testimony and evidence presented, it is the opinion of the Deputy Zoning Commissioner that the Petitioners have demonstrated the use of the subject property as a two-apartment dwelling has been continuous and without interruption and as such, have established the nonconforming use. The testimony presented showed the property owners' intention to continue to use the dwelling as a two-apartment dwelling by the occupancy of the two apartments by Ms. Hahn and Ms. Belsinger from the time the property was sold to Ms. Hahn.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and for the reasons given above, the relief requested in the Petition for Special Hearing should be granted.

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County this 14 day of February, 1991 that the Petition for Special Hearing to approve the nonconforming use of the subject property as a two-apartment dwelling, in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED, subject, however, to the following restriction:

1) The Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed the relief granted herein shall be rescinded and Petitioner would be required to file a new Petition for Special Hearing.

AMN:bjs

ANN M. NASTAROWICZ
Deputy Zoning Commissioner
for Baltimore County

Baltimore County Government
Zoning Commissioner
Office of Planning and Zoning

111 West Chesapeake Avenue
Towson, MD 21204

887-3353

Ralph K. Rothwell, Jr., Esquire
7508 Eastern Avenue
Baltimore, Maryland 21224

RE: PETITION FOR SPECIAL HEARING
NE/S Overbrook Road, 150' W of Edmondson Avenue
(405 Overbrook Road)
1st Election District - 1st Councilmanic District
Harry E. Belsinger, et al - Petitioners
Case No. 91-212-SPH

Dear Mr. Rothwell:

Enclosed please find a copy of the decision rendered in the above-captioned matter. The Petition for Special Hearing has been granted in accordance with the attached Order.

In the event any party finds the decision rendered is unfavorable, any party may file an appeal to the County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact Ms. Charlotte Radcliffe at 887-3391.

Very truly yours,

ANN M. NASTAROWICZ
Deputy Zoning Commissioner
for Baltimore County

AMN:bjs

cc: Mr. Gary Grabowski, President
Westbrook Community Association
434 Overbrook Road, Baltimore, Md. 21228

Mr. James A. Cohill, III
408 Overbrook Road, Baltimore, Md. 21228

Ms. Patricia Blasco
435 Overbrook Road, Baltimore, Md. 21228

People's Counsel

File

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91-212-SPH

1

Date of Posting: 1-8-91

District: 104

Post for: Spencer Harvey

Petitioner: Spencer Harvey

Location of property: NE 1/4 of Ordway Pond, 1.50 W of
Clinton Avenue, 40.5 Ordway Pond

Location of Sign: On front of 40.5 Ordway Pond

Remarks:

Posted by: H. J. Post

Number of Signs: 1

Date of return: 1-11-91

\$ 54.00

S. Zehe Olman
Publisher

2 Bills sent 1/22/91
in the amount of
\$79.00

\$ 54.00

Date _____

10/23/90

H9100175

| | QTY | PRICE |
|----------------------------|-----|---------|
| PUBLIC HEARING FEES | 1 X | \$35.00 |
| 000 -SPECIAL HEARING (IRL) | | |
| TOTAL: | | \$35.00 |

LAST NAME OF OWNER: BELSINGER

0404#0062MICHR
8A C010:45AM10-25-90

\$35.00

Please make checks payable to: Baltimore County

Customer Validation: _____

cc: Ralph K. Rothwell, Jr., Esq.

cc: Harry Edward Belsinger, et al
Ralph K. Rothwell, Jr., Esq.

cc: Mr. & Mrs. Harry E. Belsinger
1932 Snyder Avenue
Dundalk, MD 21222

887-3353

Petitioner: Harry E. Belsinger, et ux
Petitioner's Attorney: Ralph K. Rothwell

BALTIMORE COUNTY, MARYLAND
INTER-OFFICE CORRESPONDENCE

TO: J. Robert Haines
Zoning Commissioner

DATE: December 3, 1990

FROM: Pat Keller, Deputy Director
Office of Planning and Zoning

SUBJECT: Edith May Souza, Item No. 166
Earlie E. and Linda R. Towe, Item No. 170
Roland H. and Darlene Farlow, Item No. 171
Kwan Woo Lee, Item No. 173
Harry E. Belsinger, et al., Item No. 175
Gary D. and Kathleen M. Stewart, Item No. 178
Dale A. and Cheryl Poletynski, Item No. 181
Bruce D. and Mary V. Frith, Item No. 182
Eileen C. Mislery, Item No. 183
William C. and Constance H. Pitcher, Item No. 185
Key Federal Savings Bank, Item No. 186
Stephen D. and Wendy K. Mooney, Item No. 189
Brian D. and Tullia Briscoe, Item No. 193
Charles Henry and Vickie Jean Wallis, Item No. 195
Sharon Plaskowski, Item No. 196
Gary E. Stahl, Item No. 199
Keith E. and Terri L. Yeager, Item No. 201
Robert E. and Deborah L. Jennings, Item No. 202
Gloria P. Brown, Item No. 203
Robert E. and Karen F. Ege, Item No. 207
Javad Darbandi, Item No. 208
Thomas D. and Jeannette Considine, Item No. 209
Helen M. Yingling, Item No. 214

In reference to the Petitioners' requests, staff offers no comments.

If there should be any further questions or if this office can provide additional information, please contact Jeffrey Long in the Office of Planning at 887-3211.

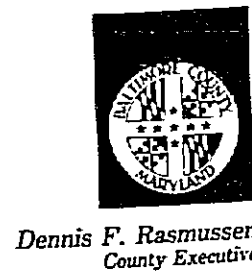
PK CL JEM

ITEMS FOR THE BOARD

received
12/10/90

Baltimore County
Department of Public Works
Bureau of Traffic Engineering
County Office Building
Towson, Maryland 21204
(301) 887-3554

November 28, 1990



Mr. J. Robert Haines
Zoning Commissioner
County Office Building
Towson, MD 21204

Dear Mr. Haines:

The Bureau of Traffic Engineering has no comments for item numbers, 170, 172, 175, 176, 178, and 180.

Very truly yours,

Michael S. Flanagan
Michael S. Flanagan
Traffic Engineer Associate II

MSF/lab

received
12/13/90

Baltimore County
Department of Public Works
Bureau of Planning and Zoning
County Office Building
Towson, Maryland 21204
(301) 887-3554

NOVEMBER 2, 1990



Dennis F. Rasmussen
County Executive

J. Robert Haines
Zoning Commissioner
Office of Planning and Zoning
Baltimore County Office Building
Towson, MD 21204

RE: Property Owner: HARRY EDWARD, NANCY, AND
MILDRED BELSINGER

Location: #405 OVERBROOK ROAD

Item No.: 175 Zoning Agenda: NOVEMBER 13, 1990

Gentlemen:

Pursuant to your request, the referenced property has been surveyed by this Bureau and the comments below are applicable and required to be corrected or incorporated into the final plans for the property.

5. The buildings and structures existing or proposed on the site shall comply with all applicable requirements of the National Fire Protection Association Standard No. 101 "Life Safety Code", 1988 edition prior to occupancy. CHAPTER 22

REVIEWER: *Jeffrey Long* Noted and Approved *W.F. Brackley*
Planning Group Fire Prevention Bureau
Special Inspection Division

JK/KEK

received
11/14/90

BALTIMORE COUNTY, MARYLAND
INTER-OFFICE CORRESPONDENCE
NOVEMBER 5, 1990

received
11/8/90

TO: J. ROBERT HAINES, ZONING COMMISSIONER, DEPARTMENT ZONING

FROM: CHARLES E. BURNHAM, PLANS REVIEW CHIEF, DEPARTMENT OF PERMITS & LICENSES

SUBJECT: ZONING ITEM #: 175
PROPERTY OWNER: Harry Edward Belsinger & Nancy Belsinger & Mildred Eileen Belsinger
LOCATION: NE/S Overbrook Road, 150' W of Edmondson Ave.
(#405 Overbrook Road)
ELECTION DISTRICT: 1st
COUNCILMANIC DISTRICT: 1st

A REVIEW OF THE SITE PLAN FOR THE ABOVE ZONING ITEM INDICATES THE FOLLOWING:

() PROPOSED SITE PLAN DOES, DOES NOT, COMPLY TO STATE CODE OF MARYLAND REGULATION 05.01.07, MARYLAND BUILDING CODE FOR THE HANDICAPPED.

() PARKING LOCATION () RAMPS (degree slope)
() NUMBER PARKING SPACES () CURB CUTS
() BUILDING ACCESS () SIGNAGE

() PLAN DOES, DOES NOT COMPLY TO SET BACKS FOR EXTERIOR FIRE SEPARATION DISTANCE OF ARTICLE 5 AND ARTICLE 9 OF THE CURRENT BALTIMORE COUNTY BUILDING CODE.

() A BUILDING PERMIT IS REQUIRED BEFORE ANY CONSTRUCTION CAN BEGIN. SECTION 111.1 OF ARTICLE 1. CONSTRUCTION DRAWINGS MAY BE REQUIRED.

(X) A CHANGE OF OCCUPANCY PERMIT IS REQUIRED TO CHANGE THE EXISTING USE OF THE STRUCTURE TO THE PROPOSED USE. SEE ARTICLE THREE AND ARTICLE ONE, SECTION 103.2 ALTERATIONS MAY BE NECESSARY BY CODE TO COMPLY TO NEW USE REQUIREMENTS. EXISTING USE R-3, Proposed Use R-2

() STRUCTURE IS SUBJECT TO FLOOD PLAIN LIMITATIONS, SECTION 516.0 COUNCIL BILL #158-88 (BALTIMORE COUNTY BUILDING CODE).

(X) OTHER "MAINTAIN THE EXISTING FIRE WALL SEPARATION ON THE PROPERTY LINE BETWEEN THE TWO PARCELS OF LAND.

PERMITS MAY BE APPLIED FOR @ ROOM 100, 111 WEST CHESAPEAKE AVENUE, TOWSON, MARYLAND 21204 - PHONE - 887-3900.

THIS REVIEW COVERS ONLY MAJOR ITEMS ASSOCIATED WITH THE SITE PLAN, A FULL REVIEW MAY BE CONDUCTED WHEN THE PERMIT APPLICATION AND PLANS ARE SUBMITTED.

APPLICABLE CODE: 1987 NATIONAL BUILDING CODES AS ADOPTED BY COUNCIL BILL #158-88.

BALTIMORE COUNTY, MARYLAND
INTER-OFFICE CORRESPONDENCE

TO: Zoning Advisory Committee DATE: November 16, 1990

FROM: Robert W. Bowling, P.E.

RE: Zoning Advisory Committee Meeting for November 13, 1990

The Developers Engineering Division has reviewed the subject zoning items and we have no comments for items 170, 172, 175, 176, 178, and 180.

Robert W. Bowling
ROBERT W. BOWLING, P.E., CHAIR
Developers Engineering Division

RWB:s

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: James Dyer
Zoning Supervisor

DATE: 10/25/90

FROM: James Thompson
Zoning Enforcement Coordinator

Item No.: 175 (if known)
SUBJECT: Petitioner: *Belsinger* (if known)

91-212-SPH

VIOLATION CASE # 91-428
LOCATION OF VIOLATION 405 Overbrook Rd
DEFENDANT Harry Belsinger ADDRESS 1932 Snyder Ave 21222

Please be advised that the aforementioned petition is the subject of an active violation case. When the petition is scheduled for a public hearing, please notify the following persons:

NAME ADDRESS
Wootbrook C.A. P.O. 21095
Baltimore MD 21228

After the public hearing is held, please send a copy of the Zoning Commissioner's Order to the Zoning Enforcement Coordinator, so that the appropriate action may be taken relative to the violation case.

PLEASE PRINT CLEARLY

PETITIONER(S) SIGN-IN SHEET

| NAME | ADDRESS |
|---------------------|--------------------------|
| HARRY BELSINGER | 1932 SNYDER AVE 21222 |
| MARGARET GRAY | 112 MACE AVE 21221 |
| Nancy Belsinger | 1932 Snyder Ave 21222 |
| Robert J. Belsinger | 714 Sheldahl Court |
| Robert J. Belsinger | 1818 Wootbrook Ave 21222 |

PROTESTANT(S) SIGN-IN SHEET

| NAME | ADDRESS |
|---------------------|-------------------------------------|
| Gary Grabowski | 434 Overbrook Rd Baltimore MD 21228 |
| James A. Co Hill Jr | 408 Overbrook Rd Baltimore MD 21228 |
| Patricia G. Glines | 435 Overbrook Rd MD 21228 |

Richard Swerley